

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (EASTERN DIVISION)

Comcast of Georgia/Massachusetts, Inc. and Comcast of Middletown, Inc. and Comcast of Boston, Inc. and Comcast of California/ Massachusetts/ Michigan/Utah, Inc. and Comcast of Maine/New Hampshire, Inc. and Comcast of Massachusetts I, Inc. and Comcast of Massachusetts II, Inc. and Comcast of Massachusetts III, Inc. and Comcast of Massachusetts/New Hampshire/Ohio, Inc. and Comcast of New Hampshire, Inc. Plaintiffs, vs. Joseph Amaro, Dimas Amaro, and Joseph Amaro and Dimas Amaro, Jointly d.b.a. CABLEJOINT and D's Electronics	Case No.: 04-cv-10414-RCL AMENDED MOTION TO AMEND SCHEDULING ORDER
Defendants	

NOW COME the Plaintiffs in the above-captioned case and, hereby amend their prior, Assented-to Motion to extend all pertinent deadlines in this case by two months by including new grounds for the granting of said motion. Specifically, the Plaintiffs still move, with the additional new grounds set forth below, that the Scheduling Order be modified such that the new dates are as follows:

Certification pursuant to LR D. Mass 7.1 (A) (2)

Plaintiffs' Counsel certifies that he had conferred with Defendants' Counsel and Defendant's Counsel fully assents to the extension. Plaintiffs' Counsel called Defendant's Counsel twice, leaving messages at his office and his cell phone early last week before bringing this amended motion but Plaintiffs' Counsel has not received a return phone call.

1. Deadline for fact Discovery and to amend the Complaint and/or add new Defendants to January 2, 2006.
2. Deadline for the Plaintiffs expert disclosure January 3, 2006
3. Deadline for the Defendants expert disclosure February 3, 2006.
4. All Discovery due by March 3, 2006.
5. Motions due by April 5, 2006

As grounds, the Plaintiff states:

1. All grounds referenced in the prior motion of the October 2, 2005.
2. The Defendants assent to the extension.
3. Eduarda Amaro, the mother of the Defendants, was noticed and was served a subpoena for her deposition on October 4, 2005 but she did not appear for that deposition. It was claimed by her husband that she was ill. Plaintiffs are now trying to reschedule that deposition. Her testimony is important in that her name appears on one of the pertinent invoices regarding the purchase of cable devices.
4. On detailed examination of the Defendants' Discovery response it was found to be incomplete. Plaintiffs are trying to work out these issues with Defense Counsel. Plaintiffs hope that the Discovery response issues can be worked out between the Parties, but they reserve the right to bring a Motion to Compel should that be necessary.
5. At the deposition of the Defendants on October 4, 2005, the Defendants gave testimony totally at odds with the factual stipulations they made in the state criminal cases related to their distribution of cable devices. This testimony can possibly give rise to a motion *in limine*, as to whether they are Judicially Estopped from now taking actual positions Contra to positions they took in the criminal prosecution. This situation complicates discovery. Plaintiffs are awaiting transcripts to review before deciding whether to bring

such an *in limine* motion. Also, Plaintiffs reasonably believed that certain matters that were admitted in the criminal court would now be admitted in the civil prosecution, but does not now appear to be the case.

Accordingly, these additional grounds further support of the motion and the schedule in order. Also, see affidavit of John M. McLaughlin.

Respectfully Submitted for the Plaintiff,
By Its Attorney

10/28/05
Date

/s/ John M. McLaughlin
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CERTIFICATE OF SERVICE

I, John M. McLaughlin, attorney for the Plaintiff, hereby certify that on the 28th day of October 2005, a copy of the foregoing motion and affidavit were sent via first class mail to

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/s/ John M. McLaughlin
John M. McLaughlin